IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21495 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

==========

SURESHBHAI @ SURESH DHOBI GANESHBHAI VACHHETA - Petitioner(s)

Versus

COMMISSIONER OF POLICE AHMEDABAD & 2 - Respondent(s)

==========

Appearance :

MR ANIL S DAVE for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/11/2005

ORAL JUDGMENT

1.Sureshbhai @ Suresh Dhobi Ganeshbhai Vachheta, petitioner has filed this petition of habeas corpus with a prayer that this Court may be pleased to quash

and set aside the order of detention dated 13/9/2005 passed by the Police Commissioner, Ahmedabad, detaining authority, under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 and further be pleased to direct the respondents to release the petitioner detenue from detention forth with. Petition has been filed on 20/10/2005 and matter was placed before the Court on 24/10/2005. On that day, my brother Mr.Justice A.M.Kapadia has issued rule, which is returnable. Therefore, the matter has come up for final hearing in this Court.

2. Learned advocate for the petitioner has invited my attention to the order dated 13/9/2005 passed by the Police Commissioner, Ahmedabad, detaining authority, under the provisions of Section 3(2) of the PASA Act. Petitioner has also been detained in jail at Junagadh by the order dated 13/9/2005. The detaining authority has supplied the grounds of detention dated 13/9/2005 to the petitioner. The said grounds revels that petitioner has committed two offences which are as under:

1. Offence registered at East Police Station in

connection with CR No.274 of 2003 dated 5/2/2003 under Section 66(B) and 65(E) of the Prohibition Act. It is alleged that petitioner was storing 50 liters of liquor and one scooter, valued at Rs.17,000/-.

2. Offence registered at East Police Station in connection with CR No.1534 of 2005 dated 9/9/2005 under Section 66(B), 65(E) and 81 of the Prohibition Act. It is alleged that petitioner was storing about 210 liters of liquor and three scooter valued at Rs.66,000/- and also Rs.7,800 and mobile phone valued at Rs.8,000/-.

3. It was also alleged that petitioner is carrying on anti social activities as carrying on business of liquor and therefore, he is bootlegger under Section 2(b) of the PASA Act as the activities of the petitioner also affects the public health in this behalf.

4. On behalf of the petitioner, learned advocate for the petitioner has stated that activity of the petitioner at the most affecting law and order situation but not public order. For which the learned advocate has relied upon the judgment in the case of Piyush Kantilal Mehta v. Commissioner of Police, reported in AIR 1989

SC 491, Division Bench judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J) in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana decided on 22/8/2000 and another judgment of this Court (Coram:K.M.Mehta, J.) on 15/11/2005 in Special Civil Application No.20420 of 2005.

5.The On behalf of the respondents, Mr.N.D.Gohil, learned APP appears. He has relied upon order of detention as well as grounds of detention in this behalf. The authority has not filed affidavit in this behalf.

6.I have considered the facts and circumstances of the case of the petitioner. In absence of any cogent and credible material, only on the basis of two cases registered against the detenue, the authority cannot pass the order of detention.

7.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra)

and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

8. In view of the same, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Sureshbhai @ Suresh Dhobi Ganeshbhai Vachheta, detenue is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

(ila)